

LEGAL SERVICES

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MEMORANDUM

April 22, 2021

SUBJECT: Duty of sport fishing guide to report
(CSSB 59(RES); Work Order No. 32-GS1608\B)

TO: Senator Josh Revak
Attn: Betty Tangeman

FROM: Alpheus Bullard
Legislative Counsel



You asked that we identify any constitutional or legal issues presented by SB 59, introduced by the Senate Rules Committee by the request of the governor. The bill establishes a licensing regime for salt water sport fishing operators and salt water sport fishing guides (operators and guides). The provisions of the bill are virtually the same as those that previously existed in statute for a prior licensing regime for sport fishing operators and guides.

One legal issue exists that should be addressed. The bill's sec. 16.40.282 provides that "[t]he [Department of Fish and Game (department)] may collect [certain] information from sport fishing guides" Other portions of that same provision require operators and guides to comply with "the reporting requirements in this section" and are addressed to "person[s] who [are] required to complete reports under this section."

While the section provides the department the authority to collect information, it does not contain any reporting requirements for operators and guides and it does not require anyone to complete a report.¹ It strains statutory interpretation to equate the department's authority to "collect information" with a statutory requirement for operators and guides to report.

To avoid a possible challenge to any reporting requirements adopted by the department under the bill's sec. 16.40.282, if it is enacted, the section should be amended to impose a legal duty on operators and guides to comply with any reporting requirements adopted by the department in regulation.

If you have questions, or would like an amendment or new committee substitute drafted, please do not hesitate to contact me.

ALB:mjt
21-228.mjt

Attachment

¹ This issue also existed in the previous licensing regime's reporting provision for sport fishing guides and operators. See AS 16.40.280 (Reports). Repealed, § 8, ch. 70, SLA 2004, as amended by § 3, ch. 61, SLA 2009, § 1, ch. 48, SLA 2010, § 1, ch. 13, SLA 2011, and § 1, ch. 30, SLA 2012.